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September 17, 2001

Jeff S. Jordan, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, DC 20463

VIA FAX (202) 219-3923 AND FIRST-CLASS MAIL

RE: MUR 5225
Stephanie Berger

Dear Mr. Jordan,

This letter constitutes Stephanie Berger's response to your letter of August 10, 2001, which notified Ms. Berger that she had been listed as a respondent in MUR 5225.

Under the clear text of the Federal Election Campaign Act, Federal Election Commission regulations, and even according to the actual recitations of alleged violations in Mr. Paul's complaint, no action should be taken against Stephanie Berger in this MUR because she has committed no violations of the Act or Commission regulations. In fact, other than the inclusion of Ms. Berger in the laundry list of persons Mr. Paul presumes to name as respondents, the complaint contains no allegation that Ms. Berger committed any violations of FECA.

The laws and regulations the complainant alleges to have been violated are:

- A. 2 U.S.C. § 431. *et seq.* (Definitions).
- B. 2 U.S.C. § 434(b) (Reporting Requirements).
- C. 11 C.F.R. § 104.3 (Contents of Reports).
- D. 11 C.F.R. § 110.9(a) (Violation of Limitations).
- E. 11 C.F.R. § 110.9(b) (Fraudulent Misrepresentation).

The first three of these statutes and regulations describe disclosure obligations which the Act requires of candidates and political committees. As a matter of law, there are no circumstances under which an individual who is not a candidate for Federal office could commit a violation of these three provisions.

The last two regulations are codified as "Miscellaneous Provisions" of the regulations on "Contribution and Expenditure Limitations and Prohibitions." These regulations place obligations on any "candidate or political committee," any "officer or employee of a political

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committee," and any "person who is a candidate for Federal office or an employee or agent of such a candidate." 11 C.F.R. § 110.9(a)&(b). In general, these regulations prohibit officers or employees of political committees from accepting contributions or making expenditures in violation of FECA, and from fraudulently misrepresenting themselves as "acting for or on behalf of any other candidate or political committee or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof." 11 C.F.R. § 110.9(b)(1).

Here, the only political committee which Ms. Berger could be found to have been an "officer", "employee", or "agent" of is the Democratic National Committee, which even the complainant does not identify as a purported respondent. During the entire 2000 election campaign, Ms. Berger served on the staff of the DNC's Finance Department as a full-time employee. Her title was Regional Finance Director, and she held general responsibility for DNC fundraising efforts in the western states of the U.S., especially California and particularly Southern California.

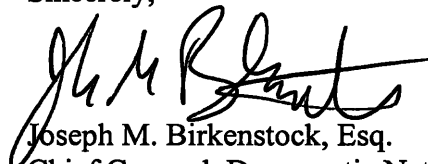
Ms. Berger has never held the title of "DNC Southern California Finance Chairwoman," in fact, there is no such position among the DNC's officers, staff, or volunteer solicitors. The complaint's significant misstatement of Ms. Berger's title and overall role in the entirety of Democratic fundraising in Southern California belies its otherwise unsupported allegation that Ms. Berger could be held to have entered into the legal relationship of agency with the Clinton for Senate campaign.

In his complaint, Mr. Paul alleges that he made unreported, excessive contributions to the Hillary Rodham Clinton for U.S. Senate Committee and New York Senate 2000, a joint fundraising committee consisting of the Clinton for Senate committee and the Democratic Senatorial Campaign Committee. Nowhere in the complaint, however, does he allege that he made any unreported contributions to the DNC, the only committee with which Ms. Berger had any kind of legal relationship or obligation to help account for contributions.

In short, even if each factual allegation in Mr. Paul's complaint is assumed to be true (despite the obvious falsity of several of his allegations), there is no set of circumstances described in the complaint which would support a finding that Stephanie Berger herself is liable for any FECA violation.

For these reasons, the Commission should find no reason to believe Stephanie Berger committed any violations of the Act or Commission regulations, and should dismiss the complaint and close the file with respect to Ms. Berger.

Sincerely,



Joseph M. Birkenstock, Esq.
Chief Counsel, Democratic National Committee
Attorney for Stephanie Berger

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